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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARC OPPERMAN, *et al.*,

Plaintiffs,

v.

PATH, INC., *et al.*,

Defendants.

Case No. 13-cv-00453-JST

CLASS ACTION

**DECLARATION OF PETER HEINKE IN
SUPPORT OF KIK INTERACTIVE, INC.’S
MOTION TO DISMISS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE
12(b)(2)**

**THIS DOCUMENT RELATES ONLY TO
OPPERMAN, ET AL. V. PATH, INC., ET AL.,
CASE NO. 13-CV-00453-JST**

DATE: November 13, 2013
TIME: 9:30 a.m.
COURTROOM: 9
JUDGE: Hon. Jon S. Tigar

OSCAR HERNANDEZ, *et al.*,

Plaintiffs,

v.

PATH, INC.,

Defendant.

Case No. 12-cv-01515-JST

CLASS ACTION

MARIA PIROZZI,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 12-cv-01529-JST

CLASS ACTION

1 I, Peter Heinke, hereby declare under penalty of perjury as follows:

2 1. I am the Chief Financial Officer and Chief Operating Officer of Kik Interactive,
3 Inc. (“Kik”). I submit this declaration in support of Defendant Kik’s Motion to Dismiss Pursuant
4 to Fed. R. Civ. P. 12(b)(2) for Lack of Personal Jurisdiction. Except as otherwise noted, this
5 declaration is based on my personal knowledge and my review of Kik’s records. If called upon to
6 testify as to the facts set forth in this declaration, I could and would competently testify thereto.

7 2. I understand that in this lawsuit, Plaintiffs seek to hold Kik liable for allegedly
8 uploading, remotely using, and storing portions of Plaintiffs’ address-book data via operation of
9 the Kik Messenger Application (“Kik Messenger” or the “App”) from July 10, 2008 to the
10 present. I further understand that two of the named plaintiffs, Stephanie Dennis-Cooley and
11 Jason Green, allegedly downloaded and installed Kik Messenger prior to February 2012.

12 3. Kik is and has always been a Canadian corporation with its headquarters, principal
13 place of business, and sole office in Ontario, Canada.

14 4. Kik developed the Kik Messenger App in Canada. Kik alone designed and
15 developed all aspects of Kik Messenger’s functionality and user interfaces.

16 5. Kik’s corporate policies and procedures, including its privacy policy and other
17 policies related to users and user data, are developed and implemented in Canada.

18 6. Kik has approximately 35 employees, all of whom are located in Ontario, Canada.

19 7. Kik is not registered to do business in California or the United States.

20 8. Kik has no bank accounts or property in California or the United States.

21 9. Kik does not pay any taxes in California or the United States.

22 10. Kik does not have an agent for service of process in California or the United
23 States. Kik was served with the complaint in this matter via email to its outside counsel.

24 11. Kik does not conduct any advertising directed specifically toward California or the
25 United States, or specifically target consumers in California or the United States, other than
26 generally making the App available for download.

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1 12. Kik does not derive any revenue from the downloading or installation of Kik
2 Messenger. In July 2013, Kik began offering “Stickers” (emoticons and other pictures
3 embeddable in users’ messages) for purchase within the Kik Messenger App. Users are also able
4 to install free add-on programs (known as “Cards”) from third-party software developers that are
5 integrated with the App.

6 13. Kik Messenger for the iOS platform is available at Apple’s iTunes Store, where
7 consumers can download the App for free.

8 14. Kik has executed Apple Inc.’s (“Apple”) iPhone Developer Program License
9 Agreement (“IDPLA”). This Agreement is a standard-form click-through agreement, the terms of
10 which Kik did not negotiate with Apple.

11 15. Kik executed the IDPLA electronically from Ontario, Canada.

12 16. Users of Kik Messenger are not required to provide their full names, addresses,
13 telephone numbers, or any other geographic or demographic data during download, installation,
14 or use of the App. The App uses IP addresses, provided by users’ wireless- or internet-service
15 providers, to send and receive user messages, but the App does not contain any geolocation
16 functionality that would enable Kik to determine reliably or accurately the location of its users.
17 Accordingly, without knowing the named plaintiffs’ Kik Messenger usernames, Kik cannot
18 determine whether or when those persons downloaded and installed the App.

19 17. To the best of my knowledge, there are no witnesses located in California or the
20 United States who have knowledge about the design, development, and functionality of Kik
21 Messenger and the Plaintiffs’ allegations regarding Kik’s alleged use of address-book data.

22 18. Kik relies on capital from private investors to fund its operations. In April 2013,
23 Foundation Capital, based in Menlo Park, California, participated in Kik’s Series B financing.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September ^{ninth}, 2013, at Ontario, Canada.

DocuSigned by:
Peter Heinke
Peter Heinke